

State of South Dakota

EIGHTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2014

463V0103

SENATE JUDICIARY ENGROSSED NO. **SB 7** - 01/28/2014

Introduced by: Senators Tieszen, Peters, and Sohlt and Representatives Stevens, Bolin, Conzet, Gibson, Rozum, and Soli at the request of the Interim Domestic Abuse Study Committee

1 FOR AN ACT ENTITLED, An Act to modify the persons eligible for protection from domestic
2 abuse and to revise certain terminology.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 25-10-1 be amended to read as follows:

5 25-10-1. Terms used in this chapter mean:

6 (1) "Domestic abuse," physical harm, bodily injury, or attempts to cause physical harm
7 or bodily injury, or the infliction of fear of imminent physical harm or bodily injury
8 ~~between family or household members~~ against a protected person, as defined in
9 subdivision (2). Any violation of § 25-10-13 or chapter 22-19A or any crime of
10 violence as defined in subdivision 22-1-2(9) constitutes domestic abuse if the
11 underlying criminal act is committed ~~between family or household members~~ against
12 a protected person;

13 (2) ~~"Family or household members," spouses, former spouses, or persons related by~~
14 ~~consanguinity, adoption, or law, persons living in the same household, persons who~~



1 ~~have lived together, or persons who have had a child together~~ "Protected person," any
2 person who is involved in one of the following relationships with the abusing party:

3 (a) Spouse or former spouse;

4 (b) Is or has been in a significant romantic relationship;

5 (c) Has a child or is expecting a child with the abusing party;

6 (d) Parent and child, including a relationship by adoption, guardianship, or
7 marriage; or

8 (e) Siblings, whether of the whole or half blood, including a relationship through
9 adoption or marriage;

10 (3) "Protection order," an order restraining ~~any family or household member~~ an abusing
11 party from committing any act of domestic abuse or an order excluding ~~any family~~
12 ~~or household member~~ an abusing party from the dwelling or residence of ~~another~~
13 ~~family or household member~~ a protected person, whether or not the dwelling or
14 residence is shared. A protection order has a duration of five years or less; and

15 (4) "Temporary protection order," an order restraining ~~any family or household member~~
16 an abusing party from committing any act of domestic abuse or an order excluding
17 ~~any family or household member~~ an abusing party from the dwelling or residence of
18 ~~another family or household member~~ a protected person, whether or not the dwelling
19 or residence is shared. A temporary protection order has a duration of thirty days
20 except as provided in § 25-10-7.1.

21 Section 2. That chapter 25-10 be amended by adding thereto a NEW SECTION to read as
22 follows:

23 For purposes of chapter 25-10, when determining whether a relationship is a significant
24 romantic relationship, the court shall consider the following factors:

- 1 (1) The length of time of the relationship;
- 2 (2) The frequency of interaction between the parties;
- 3 (3) The characteristics and the type of the relationship; and
- 4 (4) If the relationship has terminated, the length of time since the termination.

5 Section 3. That § 25-10-3 be amended to read as follows:

6 25-10-3. There exists an action known as a petition for a protection order in cases of
7 domestic abuse. Procedures for the action are as follows:

- 8 (1) A petition under this section may be made by any ~~family or household member~~
9 protected person against ~~any other family or household member~~; an abusing party;
- 10 (2) A petition shall allege the existence of domestic abuse and shall be accompanied by
11 an affidavit made under oath stating the specific facts and circumstances of the
12 domestic abuse;
- 13 (3) A petition for relief may be made whether or not there is a pending lawsuit,
14 complaint, petition, or other action between the parties.

15 The clerk of the circuit court shall make available standard petition forms with instructions
16 for completion to be used by a petitioner. The Department of Social Services shall prepare the
17 standard petition form.

18 Section 4. That § 25-10-5 be amended to read as follows:

19 25-10-5. Upon notice and a hearing, if the court finds by a preponderance of the evidence
20 that domestic abuse has taken place, the court may provide relief as follows:

- 21 (1) Restrain any party from committing acts of domestic abuse;
- 22 (2) Exclude the abusing party from the dwelling which the parties share or from the
23 residence of the petitioner;
- 24 (3) Award temporary custody or establish temporary visitation with regards to minor

1 children of the parties;

2 (4) Establish temporary support for minor children of the parties or a spouse;

3 (5) Order that the abusing party obtain counseling;

4 (6) Order other relief as the court deems necessary for the protection of a ~~family or~~
5 ~~household member~~ protected person, including orders or directives to a sheriff or
6 constable.

7 Any relief granted by the order for protection shall be for a fixed period and may not exceed
8 five years.

9 If any minor child resides with either party, the court shall order that the abusing party
10 receive instruction on parenting approved or provided by the Department of Social Services as
11 part of any relief granted.

12 Section 5. That § 25-10-6 be amended to read as follows:

13 25-10-6. ~~When~~ If an affidavit filed with an application under this chapter alleges that
14 immediate and irreparable injury, loss, or damage will result before an adverse party or his
15 attorney can be heard in opposition, the court may grant an ex parte temporary protection order
16 pending a full hearing and granting relief as the court deems proper, including an order:

17 (1) Restraining ~~any family or household member~~ an abusing party from committing acts
18 of domestic abuse;

19 (2) Excluding ~~any family or household member~~ an abusing party from the dwelling or
20 the residence of the petitioner.

21 Section 6. That § 25-10-36 be amended to read as follows:

22 25-10-36. If any law enforcement officer who is responding to a domestic abuse call has
23 probable cause to believe that a crime has been committed, the law enforcement officer shall
24 arrest the person who is suspected of committing the crime and make a complete report of any

1 action taken. The officer shall indicate on the arrest report and the fingerprint document if the
2 arrest is for a crime against a ~~family or household member~~ protected person as defined in § 25-
3 10-1.

4 Section 7. That § 25-10-40 be amended to read as follows:

5 25-10-40. No police officer or sheriff may release a person charged with assaulting a ~~family~~
6 ~~or household member~~ protected person, as defined in subdivision 25-10-1(2), or violating a
7 protection order, as provided for in this chapter, without providing notice to a committing
8 magistrate judge or circuit court. A committing magistrate judge or circuit court shall determine
9 if bond or other conditions of release are necessary for the protection of the alleged victim.

10 Section 8. That § 25-10-41 be amended to read as follows:

11 25-10-41. In determining the conditions of release under § 25-10-40, the court shall consider
12 the following conditions and may impose any condition it considers reasonably necessary to
13 protect the alleged victim of domestic abuse, including ordering the defendant:

- 14 (1) Not to subject the victim to further domestic abuse;
- 15 (2) To vacate the home of the victim;
- 16 (3) Not to contact the victim other than through counsel;
- 17 (4) To engage in counseling;
- 18 (5) To refrain from the consumption of alcohol or the use of drugs;
- 19 (6) To post bond pursuant to § 25-10-23.

20 As used in this section, the term "domestic abuse", means a violation of § 22-18-1 or 22-
21 18-1.1 if the victim is a ~~family or household member~~ protected person.

22 Section 9. That § 23A-28C-4 be amended to read as follows:

23 23A-28C-4. For the purposes of this chapter, the term, victim, means any person being the
24 direct subject of an alleged act, which would constitute a crime of violence as defined by

1 subdivision 22-1-2(9), simple assault ~~between family or household members~~ against a protected
2 person as defined in subdivision 25-10-1(2), stalking as defined in chapter 22-19A, a violation
3 of chapter 22-22, or a driving under the influence vehicle accident, under the laws of South
4 Dakota or the laws of the United States. If the victim does not survive such act or is unable to
5 comment, the term, victim, means the members of the immediate family of the primary victim.